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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PARAMASIVIAH HARSHAVARDHANA,
ODED HAUSER, FRANK N. HUJBER, RANDOLPH ROY KUTZ,
YUFEI WANG, and CATHY H. ZIMA

Appeal 2008-0048
Application 09/528,762
Technology Center 2600

Decided: April 30, 2008

Before JOSEPH F. RUGGIERO, ANITA PELLMAN GROSS, and
MARC S. HOFF, *Administrative Patent Judges*.

GROSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's Final Rejection of claims 1 through 11, 13 through 32, and 34 through 44, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants' invention generally relates to a method for restoring a service path in a network which has a non-conforming element, or an

element that is an older generation or from a different manufacturer and, therefore, is not able to actively participate in the path restoration. *See* Spec. 7:8-15. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method for restoring a service path in a network having at least one non-conforming element, said service path having a pre-computed restoration path, said pre-computed restoration path having at least one segment, said method comprising the steps of:

detecting a restorable failure along said service path; and

signaling the restoration of said failure using at least one signaling path that occupies the same bandwidth as said pre-computed restoration path, each of said at least one signaling paths being replaced by a segment of said pre-computed restoration path after signaling is complete and wherein said at least one signaling path transits said at least one non-conforming network element.

The prior art reference of record relied upon by the Examiner in rejecting the appealed claims is:

Chaudhuri	US 6,324,162 B1	Nov. 27, 2001 (filed Jun. 03, 1998)

Claims 1 through 5, 8 through 11, 16 through 21, and 43 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Chaudhuri.

Claims 6, 7, 13 through 15, 22 through 32, 34 through 42, and 44 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chaudhuri.

We refer to the Examiner's Answer (mailed August 18, 2004) and to Appellants' Brief (filed June 17, 2004) and Reply Brief (filed October 22, 2004) for the respective arguments.

SUMMARY OF DECISION

As a consequence of our review, we will reverse both the anticipation rejection of claims 1 through 5, 8 through 11, 16 through 21, and 43 and also the obviousness rejections of claims 6, 7, 13 through 15, 22 through 32, 34 through 42, and 44.

OPINION

Appellants contend (App. Br. 3) that Chaudhuri discloses a homogeneous network in which all the elements are capable of participating in signaling and restoring service in the network. Thus, according to Appellants (App. Br. 3-4 and Reply Br. 3-4), Chaudhuri fails to disclose a network with non-conforming elements, as defined in the Specification at page 14, lines 6-13. The Examiner asserts (Ans. 3) that "it is the claims, not the specification, that define the invention, it should be noted that no structural or functional difference between the claimed 'non-conforming network elements' and nodes 12F and 12G could be found from the language of claim 1." The Examiner further asserts (Ans. 3) that the Specification fails to provide a clear definition of "non-conforming network elements." Last, the Examiner contends (Ans. 4) that according to Appellants' definition, "non-conforming network elements" may be elements provided by different manufacturers, and "[t]his is exactly what Chaudhuri discloses at col. 3, lines 17-22." Accordingly, the issue before us is whether any of Chaudhuri's network elements are non-conforming.

Appellants disclose (Spec. 14:6-10) that non-conforming network elements "may be, for example, older generation network elements of a given manufacturer, or network elements provided by a number of

manufacturers. The non-conforming network elements do not provide the necessary monitoring, signaling and cross-connect functionality and databases to participate actively in real time restoration." Thus, Appellants define "non-conforming network elements" as elements that cannot participate in restoration because they do not provide the necessary monitoring, signaling, cross-connect functionality, and databases to do so. The examples provided by Appellants suggest that older generation network elements or network elements from different manufacturers have the potential for being non-conforming.

Chaudhuri discloses (col. 3, ll. 17-22) that each of nodes 12A-12G typically is a Digital Cross-Connect System (DCS) and that such DCSs are available from several different manufacturers. However, nothing in Chaudhuri teaches or suggests using nodes from different manufacturers at the same time in the same network. Additionally, Chaudhuri discloses (col. 3, ll. 52-53) that *each* of nodes 12A-12G monitors the links to detect a failure. Thus, all of the nodes participate in monitoring for restoration. Since Appellants have defined "non-conforming network elements" as not providing the necessary monitoring, signaling, and cross-connect functionality to participate in restoration, the nodes of Chaudhuri do not qualify as non-conforming network elements. Furthermore, we find no disclosure in Chaudhuri of network elements that are not able to participate in restoration. Accordingly, we cannot sustain the anticipation rejection of claims 1 through 5, 8 through 11, 16 through 21, and 43.

Regarding the obviousness rejection of claims 6, 7, 13 through 15, 22 through 32, 34 through 42, and 44, we find no teaching or suggestion in Chaudhuri, nor has the Examiner provided any rationale, for modifying

Chaudhuri to include non-conforming network elements. If anything, Chaudhuri teaches away from including non-conforming network elements by having all nodes monitoring for link failure. Consequently, we cannot sustain the obviousness rejection of claims 6, 7, 13 through 15, 22 through 32, 34 through 42, and 44.

ORDER

The decision of the Examiner rejecting claims 1 through 5, 8 through 11, 16 through 21, and 43 under 35 U.S.C. § 102(e) and claims 6, 7, 13 through 15, 22 through 32, 34 through 42, and 44 under 35 U.S.C. § 103 is reversed.

REVERSED

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